

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM E. GRZYBOWSKI,	§
	§
Defendant Below-	§ No. 105, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0709027893
Plaintiff Below-	§
Appellee.	§

Submitted: May 29, 2012

Decided: June 27, 2012

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 27th day of June 2012, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, William Grzybowski, filed this appeal from the Superior Court's sentence for his second violation of probation (VOP). The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Grzybowski's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Grzybowski pled guilty in January 2008 to one count each of possession of a deadly weapon by a person prohibited, third degree burglary, and second degree conspiracy. The Superior Court sentenced

Grzybowski to a total period of thirteen years at Level V incarceration to be suspended after serving three years for decreasing levels of supervision. He did not appeal from his sentence. In October 2011, Grzybowski was found in violation of the terms of his probation and was continued on probation. Among other conditions of his VOP sentence, Grzybowski was ordered to have no unsupervised contact with any child under the age of eighteen unless the minor's parent or grandparent was present. Grzybowski did not appeal his VOP conviction or sentence.

(3) In February 2012, Grzybowski was found in violation of his probation for a second time. Grzybowski admitted before the Superior Court that he had violated his probation by using drugs, by failing to attend counseling, by absconding, and by having unsupervised contact with a minor. The Superior Court sentenced him to a total period of ten years at Level V incarceration (with credit for 37 days served) suspended upon successful completion of the Family Problems Program for probation. Grzybowski now appeals that sentence.

(4) In his opening brief on appeal, Grzybowski argues that his VOP sentence is illegal because his probation officer never informed him that he was prohibited from having unsupervised contact with anyone under the age of 18. We find no merit to this contention.

(5) The Superior Court's first VOP sentencing order, dated October 7, 2011, explicitly prohibited Grzybowski from having unsupervised contact with

minors under the age of eighteen. We thus find no merit to the contention that he was unaware of the no contact order. Moreover, at the second VOP hearing Grzybowski admitted to having a relationship with a seventeen-year-old. He did not contend at the VOP hearing that he was unaware that this contact was prohibited. He also admitted to violating his probation by using drugs, failing to attend counseling, and absconding.

(6) In a VOP hearing, the State is only required to prove by a preponderance of the evidence that the defendant violated the terms of his probation.¹ A preponderance of evidence means “some competent evidence” to “reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”² Based on the record presented, we conclude that the evidence was more than sufficient to establish Grzybowski’s VOP by a preponderance of the evidence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹ *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

² *Id.* (quoting *Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).